

OCT 25 2007

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

BRANDON HOLTER, a minor by and
through his Guardian Ad Litem Blanca
Holter; BLANCA HOLTER, an
individual,

Plaintiffs - Appellants,

v.

CITY OF PASADENA; DERRICK
CARTER, an individual; JOHN
THOMAS; ROBERT TUCKER, an
individual; LUIS BANUELOS, an
individual; BERNARD MELEKIAN, an
individual,

Defendants - Appellees.

No. 06-55143

D.C. No. CV-04-09128-ABC

MEMORANDUM^{*}

Appeal from the United States District Court
for the Central District of California
Audrey B. Collins, District Judge, Presiding

Argued and Submitted October 16, 2007
Pasadena, California

^{*} This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

Before: KOZINSKI, TASHIMA, and McKEOWN, Circuit Judges.

In this qualified immunity appeal, we review the district court's order of summary judgment *de novo*, and construe all disputed facts in the light most favorable to the non-moving party. See, e.g., Beier v. City of Lewiston, 354 F.3d 1058, 1063 (9th Cir. 2004). Government officials enjoy qualified immunity from civil damages unless their conduct violates "clearly established statutory or constitutional rights of which a reasonable person would have known." Harlow v. Fitzgerald, 457 U.S. 800, 817 (1987). In analyzing whether an official is entitled to qualified immunity, we must address two questions, in a particular order. First, we consider whether the facts alleged show the officer's conduct violated a constitutional right. See Saucier v. Katz, 533 U.S. 194, 201 (2001). Second, and only if a constitutional right was violated, we consider whether the right was clearly established such that a reasonable officer would believe the alleged conduct to be unlawful. See id.

Construing the facts in the light most favorable to Mr. Holter's widow and child, including crediting the testimony of the accomplice, we conclude that Officer Carter's actions were reasonable under the circumstances, and therefore did not constitute unreasonable use of force in violation of the Fourth Amendment. See Tennessee v. Garner, 471 U.S. 1, 11 (1985). Because there was no violation of

the decedent's constitutional rights, "there is no necessity for further inquiries concerning qualified immunity." Saucier, 533 U.S. at 201.

AFFIRMED.